

SELECTMEN'S MEETING MINUTES
May 26, 2009

Attendance: Chairman Clifton Camp, Craig Evans and Ernie Brown

Staff: Ed Nason CEO, Pam Frazer Assessor Clerk, Dick Peckham Moderator, Brad Williamson EMD, Doug Vanderpool Forest Fire Warden, Janet Murfey Planning Board Chair, Diana Peckham Tax Collector, Marilou MacLean Treasurer & Jennifer Sonricker Admin. Assistant

Public in attendance: 6

Reporter: None

The meeting was called to order by Clifton Camp at 6:30 p.m. Clifton led us in the pledge of allegiance.

Review of minutes from April 28, 2009 & May 12, 2009. Craig had a change to April 28th minutes. On page 4 under New Business, paragraph four, Craig requested the following language be added after the second sentence: *Because the special exception was abandoned and all operations related to the special exception ceased therefore site plan review is required in Craig's opinion.*

MOTION: Craig made a motion to accept minutes of April 28, 2009 as amended, seconded by Clifton. A vote was taken, all in favor, motion carries.

MOTION: Craig made a motion to accept minutes of May 12, 2009 as presented, seconded by Clifton. A vote was taken, two in favor, Ernie abstained; motion carries.

Public

Comments: Clifton formally thanked Frank and Pam Frazer for putting flags on all veterans graves at cemeteries in town.

Pam questioned locking doors while in the town office building. Clifton explained that during normal/posted office hours both the front and rear doors of the building should be unlocked; if you are here afterhours you can lock the doors. When we are open to the public the doors must be unlocked because they are fire exit doors.

Report of Town Officials:

Admin. Asst. Jennifer reviewed request from Terrence Stamp to use both the town office building and town house for memorial for Jill Stamp on Saturday. He has already been granted permission to hold the memorial service in the town house. Given the acoustic challenges of the town house he would like to use the town office building for approximately 45 minutes to play a tape recording. Brief discussion ensued, Clifton explained his reluctance to use the town office building for private events given the sensitive material that is housed here; he would like a town official/employee present. Both Ernie and Pam explained that they would be attending the service.

MOTION: Craig made a motion to allow Terrence Stamp to use the Town Office Building for listening to tape for Jill Stamp memorial, seconded by Ernie. A vote was taken, all in favor, Clifton votes yes given earlier conditions. Motion Carries.

Assessor Clerk Pam presented warrant to Selectmen for signature; warrant is for June tax bills. She also has approximately 80 tax cards with updates that need to be reviewed by Selectmen.

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Treasurer Marilou presented the Selectmen with checks for signature and provided an update. Property/liability insurance has been renewed on-line, a change was made to include underground propane tank that was installed last year. She has also registered with the State to have all State checks automatically deposited into the operating account.

Tax Collector Diana announced that tax bills would be printed this evening, she hopes to get them in the mail Thursday. Payments are due July 1.

Cable Committee Bill Nelson provided an update. Bill spoke with Time Warner recently regarding cable lines, Time Warner had budgeted \$75,000 for the cable expansion project, this money is almost all spent, four miles of cable has been run, connection to homes still needs to be completed. They have not provided the specific roads that will now have cable service or when homes will be connected but expects to hear something tomorrow. The committee will then address entering into contract with Time Warner; we have currently been operating without a contract.

Planning Board Janet reported there was no meeting because of the holiday. She explained that the issue with the audio tape has been resolved.

Emergency Mgmt. Director Brad addressed outstanding knox-box issue. Clifton spoke with Sam at the Fire Dept. and asked he order one. Brad will follow up, he explained a form needs to be completed. Craig addressed an issue on May 15th when he was here for office hours, there was a power outage, the generator kicked on and provided power to the office building but there was no power in the Town House. Brad explained that when the generator was installed an automatic transfer switch was not installed in the Town House; in the event of a power outage a manual transfer needs to occur to provide power to the Town House. Brad explained the manual transfer switch is in the electrical panel in the kitchen of the Town House. There was a brief discussion on the cost to upgrade this, Brad explained the panel in the town house would need to be upgraded, he threw out an estimated cost of around \$3,000.

Moderator Nothing to Report

Timber Ernie reported he has received two intent to cuts, one for Map 21 Lot 1, the other for Map 4 Lots 5 & 12. Ernie has a few issues with one of the intents; the acreage amount is stated wrong and wetlands need to be crossed. DES approval is required when wetlands are involved. Brief discussion ensued with Ed the former timber monitor. Ed said the Selectmen should notify the Conservation Commission and have them watch the lot in question, they deal with wetlands. They would also receive a copy of the DES wetlands application when applied for. Ed also explained that when acreage amounts are stated wrong he just corrects the number on the intent to cut.

CEO Nothing to report

Road Agent Ed reported. Lyford and Tumbledown Dick Road have been graded and dust control applied, all other dirt roads have been racked. They have made their third trip to Walker Road, it is still wet but it has been graded enough to make the road passable. He will rent a chipper Friday to chip what has been cut so far as a result of high limbing. Clifton questioned leaves that have accumulated in the ditches. Ed explained he is looking into a large blower that will blow the leaves out of the ditch.

Craig addressed cement culvert on Moose Mountain Road, it appears to have broken through. Craig asked Ed to examine closer. Ed said they could cut the pavement back to investigate and replace if needed. Ed explained that DES permits would be required for the repair because wetlands are involved and water flows through the culvert at all times.

Pam traveled Tibbett's Hill Road this weekend and noticed the poor conditions; she asked Ed if repairs were planned. Ed explained repair work has been budgeted and is planned for end of this year.

Clifton asked for update on planned paving projects. Ed is waiting on Wolfeboro to organize work on Pleasant Valley Road. Eaton Road repairs were also discussed. Ed plans to remove the 'Y' at the end to make plowing easier. Mr. Hughes, who lives on Eaton Road, addressed safety concerns over this. He is afraid during icy conditions he will slide right out on 109. He asked if grade will be taken out slightly to address this. Ed explained some grade would be taken out at the crest but there is a lot of ledge in this area. Ed suggested the Selectmen drive Eaton, Walker and Cottle Hill Road with him to examine the roads and consider what needs to be done to make them maintainable. *The Selectmen will meet Ed at 7:30 AM on June 3 to examine roads.*

Forest Fire Warden	Doug reported fire danger was reduced from a 5 to a 3 on Sunday, things have been quite but fire danger remains elevated, rain is needed.
Trustees of The Trust Funds	N/A
Town Clerk	N/A
Archivist	Nothing to report.
Conservation Commission	Tom Giguere explained the conservation commission would like to be involved with wetlands associated with Map 4 Lot 5 & 12 with regard to timber permit.
Parks & Playground	N/A
GWRSD	Ernie provided and update. Final design has been divided into 2 phases, the multipurpose building will be built in phase 1; the goal is to go out to bid in August with construction beginning in September. Roof design for this building is being addressed, currently water mitigation is an issue, the current design being proposed would allow for containment and storage of water from roof that will then be used to water the athletic fields. Dick Peckham asked if the architectural design was sent out to bid. Ernie explained that this portion of the project was not sent to bid; the school district has used the same architectural firm for all of the building over the past 15 or so years and has been very happy with the outcome. All projects have come in on time and under budget, he also explained that fees with the architect have been negotiated for different projects. Dick feels the design should have been sent out to bid. Per Dicks request Ernie will pass along this comment to the school board.
Road Committee	Nothing to report
Agricultural Commission	Nothing to report
Heritage Commission	Craig reported the next meeting is Wednesday at 6:30 PM in the Town House.
Old Business	Town House Repairs: Craig is waiting for trees to be removed before contacting Jay Badger regarding sill issue at Town House.

Town Cane Policy: Brookfield Cane policy addressed. Craig has reworked the proposed statement addition to the current policy based on previous suggestions. The proposed addition reads “Whereas the Town of Brookfield has no elder care facility within the borders of the town, the candidate with greatest age may be found living with family members or in such a elder care facility within the counties of Carroll or Strafford. That candidate shall not have resided in such facility or with family members outside of Brookfield for more than 5 years since their last residence within the town.” Selectmen discussed proposed language. A decision was made to add “At the time of presentation” to the beginning of the last sentence.

MOTION: Craig made a motion to approve Town Cane Policy with additional language, seconded by Ernie Brown. A vote was taken, all in favor. Motion Carries.

Bulletin Boards: Craig reported the community bulletin board has been installed in the hallway. He will be adding a heading above the board to read community announcements. Brad asked for Craig to also have a heading made for the new bulletin board on Stoneham Road. This heading is to read Town of Brookfield. Discussion over website address being added to top of main bulletin board at town office building discussed. At an earlier meeting it was suggested the website address be added to the bottom of the 1794 Brookfield sign, this idea has been abandoned. There was no opposition to the latest suggestion. Old post and road signs of old bulletin board on Stoneham Road discussed. The selectmen agreed to have the signs removed and preserved and to have the main post removed.

Moose Mountain Recreation: As a follow up to the last two meetings a list of seven questions was formulated regarding possible need for site plan review at Moose Mountain Recreation and presented to an attorney. The attorney presented these questions was Laura Spector of Mitchell Municipal Group, P.A.; not the town attorney. Clifton read the questions and attorney response. A copy of the Q & A is attached to the minutes. A comment was made as to whether the timeline was provided to Attorney Spector, it was not. Boonie asked when the question were presented to Attorney Spector; Clifton answered, they were presented this morning. Clifton will forward the timeline to attorney Spector for further review so more research can be provided. Bill Gaver asked when the public would have access to town attorney Susan Slacks answers; earlier similar questions regarding site plan review were presented to attorney Slack. Clifton explained that currently these answers are protected under privileged information; the Selectmen still need to meet to discuss these answers before a decision is made to release the information. Bill Gaver made a request to have Attorney Slacks comments released to the public, he questioned why both attorney's comments were not released at the same time.

MOTION: Ernie made a motion for the Selectmen to take a brief recess to allow the Selectmen to meet in non-public session to discuss Attorney Slack’s comments, seconded by Craig. A vote was taken, all in favor. Motion carries.

Non Public Session – The three Selectmen meet in Selectmen’s office to discuss Attorney Slack’s email comments from May 1, 2009.

MOTION: Ernie made a motion to come out of non-public session, seconded by Craig. A vote was taken, all in favor. Motion Carries.

Clifton read comments received from Attorney Slack on May 1, 2009 regarding site plan review. A copy of the site plan review was provided to Attorney Slack, her comments are attached to the minutes. In summary, Attorney Slack feels site plan review would be triggered. Further discussion ensued; many disagreeing with Attorney Slacks conclusion. Public comments were made over change of use. To date several feel there has been no significant change of use to Moose Mountain Recreation, several examples were given. Craig explained his disagreement with the Planning Board decision not to require site plan review; he feels **any** development at Moose Mountain requires site plan review adding that even if the new owner was doing everything exactly as it was in 1963, site plan review should still be required. Craig addressed a few of his concerns; if we allow a series of weddings this summer and people begin to complain it will be very hard to do anything about it at that point. He does not see site plan review as a prevention tool but a protection tool for the town. Craig has spoken with three different lawyers and they

have all supported site plan review. Janet commented saying she sees Craig's point but can also see the point from the other side. Janet expressed that with our broad definition of active recreation use if we were to get into a legal battle over what is allowed and not allowed she feels legally they may look at what is allowed at similar ski areas to determine what is allowable. Boonie addressed two points of discussion; use of site plan review and definition of recreational use. She feels site plan review is like a business plan. This triggered several comments; Ed does not feel what has occurred so far at Moose Mountain has gone outside its accepted use, if this expands in the future site plan review would be warranted. Clifton commented feeling Planning Board is responsible for requiring site plan review not the Board of Selectmen and is wondering why the BOS is considering this if it is not their responsibility. Discussion continued with Janet reviewing the Planning board decision not to require site plan review with a vote of 5 to 2, sighting the rationale behind this decision being the majority of the board did not feel the changes made to date were a change of use. She feels the planning board decision should stand until the planning board better defines recreational use. Boonie addressed two articles that were printed in the area newspapers over the last few weeks these were interviews with Mr. Bourdeau over his plans for Moose Mountain Recreation; she does not feel this is how the town should learn about Mr. Bourdeau's plans for Moose Mountain. Craig addressed a public hearing in 1993 regarding re-zoning of Moose Mountain; to date no minutes have been found of this hearing. He has also found changes made to recreation section in the 1995-96 time frame. Craig has more research to do but it appears that the original definition of recreational use was more detailed than it currently is. He will continue to research and bring findings to future meetings. The board of Selectmen, as the enforcing board of the town, will continue to look into what is allowed at Moose Mountain and what is not. Janet encouraged the Selectmen to get guidance from other ski areas in the area when looking at allowable uses. She also added that the Planning Board will continue to define active recreational use for Town Meeting. She suggested open and direct communications between the Planning Board, Board of Selectmen and Mr. Bourdeau. Clifton requested this issue be put to bed until something new comes up. Ed made a request to have any planned Moose Mountain Recreation discussions placed on the agenda.

New Business Ed inquired about the possibility of a private individual upgrading a town road to town specifications. The long term goal would be to have the road changed from a class 6 to class 5 road allowing the owner to build on the lot. There were mixed opinions regarding this. It would need to go to Town Meeting for final approval after upgrading so there is a big risk involved in making the upgrades before approval. Pam cautioned of possible RSA not allowing private residence to upgrade a town road. More research will need to be done.

Craig referred to recent issue of Town & Cities devoted to special event permits.

MOTION: Ernie made a motion that Selectmen utilize Laura Spector of Mitchell Municipal Group as Selectmen Attorney, Craig indicated he would not second the motion, Clifton seconded. A vote was taken, Ernie & Clifton Yes, Craig No. Motion Carries.

Mail Reviewed.

Ed presented verbal offer from his church of \$900 for the generator. Selectmen will discuss at later date.

MOTION: Ernie made motion to adjourn, seconded by Craig. A vote was taken, all in favor. Motion carries.

Meeting adjourned at 9:45pm.

Respectfully submitted,

Jennifer Sonricker
Administrative Assistant

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Hello Laura,

Here are the Questions we spoke about.

1. What is allowable use under our Recreational District? Zoning Ordinance reads: The intent of this article is to provide for active recreational use without impacting the environment to the historic residential character to the community. What is the definition of Active Recreational Use? Without a definition in the ordinance, it is hard to give you a good definition of what an active recreational use is. Traditionally, a court would turn to the dictionary; however, the Recreational District is specifically defined as the Moose Mountain Ski Area and therefore it seems very likely to me that a court would find that a ski area is an active recreational use.

2. Do the Selectmen have the authority to over ride a planning board decision, and require them to require a site plan review? No.

3. Do the Selectmen have the authority to demand a site plan review of an individual, if the planning board does not request one? (no building permits are being issued at this time, all repairs and/or remodeling to current structures has already been completed) Not really. The selectmen could bring an enforcement action to require a property owner to get site plan review; however, the property owner's defense would be that he asked the planning board, which indicated no site plan review was necessary. This would be a very uncomfortable position for the town to be in—a battle of the boards, so to speak. It would be better to meet with the planning board and try to understand its position and, if you believe it is wrong, educate it on your position.

4. Is requesting / requiring a site plan review an enforcement issue under our current Zoning Ordinance? Or is it strictly a planning tool for the use of the Planning Board? It could be an enforcement tool, but please see the answer to #3.

5. As the enforcement arm of the Brookfield Zoning Ordinance, can the Board of Selectmen indicate to a land owner that he is in violation of Zoning Ordinance (cite Section) and direct the landowner in the correction to the violation? Yes. However, please see the answer to #3.

6. With the new zoning (recreational) in place as of 1993, would any new business starting up in that zone require a Site Conceptualization and Site Plan Review for any activity in the zone. There have been no other similar businesses in the zone since its creation in 1993. A new business which starts after 1993 would require site plan review. However, as I understand it, the ski business is not new. It is a reopening of a use which predated zoning and site plan review and therefore, unless there has been an intent to abandon the use, it would not require site plan review. Here, while the ski business has not operated in 16 years, that alone is not evidence of an intent to abandon the use such that site plan review would be required (I do see that you have a one year presumption of abandonment in your zoning ordinance for zoning purposes—I am not sure how that would impact the question of whether site plan review is required). We will need more facts to determine that and I will need more time to think about it and discuss it. My inclination is that no site plan approval is required for the ski business, but I would like to review the entire file on the property, which I understand includes some variance approvals, to give you a more informed answer.

7. Continuation of Question #6. Even if the new business purchased an existing business that was already on site and had been historically ran off and on over a period of 40 plus years? (it has been closed for at least the last 16 years or so) Please see the answer to #7.

Craig Evans

From: "Susan Slack" <susanslacklaw@myfairpoint.net>
To: "Clifton Camp" <cj@disneydazed.com>
Cc: "Ernie Brown" <ernie@hayesrealestate.net>; "Craig Evans" <castor74@roadrunner.com>
Sent: Friday, May 01, 2009 6:17 PM
Subject: Site Review Regulations

Clifton,

Thanks for faxing the town's Site Plan Review Regulations. As a follow up to our telephone conversation earlier today, I have reviewed Article V (Types of Developments Requiring Site Plan Review).

The first sentence pertains to single-family dwellings and agriculture, as well as any accessory uses related to them. These types of uses are not required to obtain site plan approval.

The paragraph goes on to list the types of uses for which site plan approval is required. These all relate to nonresidential uses and include new principal buildings and accessory buildings, additions to principal buildings or accessory buildings that are more than 1,000 square feet, and any change in use of the site or existing building.

Even if there were no questions about possible abandonment of use as a ski area during the long period in which there was no activity on the property, Article V clearly requires site plan review for changes in use of the site or its existing buildings. Site work to allow tubing, for example, falls under the category of a change in use of the site since the site would be altered to accommodate a recreational use not available there before.

One issue is which activities are permitted under the zoning ordinance provision permitting "active recreational use." A restaurant that serves people participating in the recreational activities on site is probably closely enough related to active recreation to be permitted. A restaurant simply open to the public regardless of recreational use, particularly one offering dancing and concerts, is probably not permitted because it is more of a commercial use, not active recreational use.

A second issue is whether any permitted recreational uses the owner plans to offer will require a change to the site or existing buildings, or will require new buildings or additions of 1,000 square feet or more. If so, site plan approval is required.

I hope this clarifies the situation, but if you have further questions, please let me know.

Susan
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5/12/2009